

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1757 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT ELECTRICITY BOARD

Versus

JANTA ICE FACTORY

Appearance:

MR PK PANCHOLI for Petitioners
MR PJ KANABAR for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 29/09/2000

ORAL JUDGEMENT

The present Revision Application has been filed on behalf of the Gujarat Electricity Board through its Officers. The petitioners herein are the original defendants, against whom the respondent Janta Ice Factory, through its proprietor, filed a suit, being

Regular Civil Suit No.195 of 1994, in the Court of Civil Judge (J.D.), Dhoraji. It is the case of the plaintiff that the plaintiff is running the Ice Factory in Dhoraji Town and for the purpose of his business, he is getting electricity supply from the Gujarat Electricity Board and accordingly, plaintiff is a consumer of the Board and has taken electricity connection of 46 H.P. On 1.12.1994, Officers of the Electricity Board visited the premises and they found that the meter was running slow to the extent of 30.21%. It is the case of the plaintiff that except slowness of meter, nothing further was found regarding any theft of electricity or anything like tampering with the meter by the plaintiff. The Officers of the Board had taken away the meter for inspection and subsequently, they gave report in connection with the slowness of the meter and, on that basis, they informed the plaintiff that they will give revised bill to him. The plaintiff, therefore, filed the aforesaid suit on the ground that in view of the threat given to him about disconnection in case he did not comply with the supplementary bill, necessary injunction is required to be granted against the Board. On the aforesaid ground, suit for declaration and injunction has been filed and in the suit, application for interim injunction Exhibit 5 was given by the plaintiff.

The defendant-Board appeared in the suit and denied the suit on various grounds, that the plaintiff was served with the revised bill for Rs.16,673.03 Ps. and that the revised bill was as per Rules and Regulations. It was, therefore, prayed that application for interim injunction should be dismissed. It seems that ad interim injunction was granted by the trial court and, thereafter, after hearing both the sides, the learned trial Judge, by his order dated 3rd June, 1995, rejected the said application at Exhibit 5. Against the said order, the present respondent, i.e. original plaintiff, preferred an appeal, being Civil Miscellaneous Appeal No.54 of 1995, before the District Judge, Gondal. The said appeal was heard by the Third Extra Assistant Judge, Rajkot, at Gondal and he ultimately by his order dated 12th August, 1996, allowed the said appeal and set aside the order of the trial court below Exhibit 5 and granted injunction during the pendency of the suit in favour of the plaintiff. The aforesaid order of the trial court is challenged in this revision application by the present petitioners.

When the appeal was pending before the appellate court, there was an interim order by the appellate court dated 14th June, 1995 and the appellate court at the time

of granting interim relief to the present respondent, directed that the respondent should pay 30% of the supplementary bill. I am told by Mr.Pancholi for the petitioners that the said amount was paid by the plaintiff on 16th June, 1995 and that is how, the connection was not disconnected in view of the payment of 30% amount by the original plaintiff.

Looking to the papers, it seems that, prima facie, it is not a case of theft, but it is a case of slowness of the meter and, therefore, the question arises whether if there is any defect in the meter and if the meter is running slow, not because of any trick played by the plaintiff, whether in such cases, the matter is required to be referred to the Electrical Inspector or not. Mr. Pancholi for the petitioners submitted that even under Condition No.34 of Condition of Supply Rule, even in case of slow meter where the supplementary bill is concerned, the consumer can approach the Appellate Committee of the Board by making payment of 30% amount and that in that case, the suit will not be maintainable as there is a special forum created to decide the said controversy and as this fact is a subsequent fact, this plea was not taken by the Board before the trial court. Today, I am concerned with the order of the appellate court and to find out whether the aforesaid order is exceeding jurisdiction or not. In view of the decision of the Apex Court in Hindustan Aeronautics v. Ajit Prasad, AIR 1973 SC 76, powers of this Court under Section 115 are of a very limited nature. As stated earlier, the present case relates to issuance of supplementary bill on the ground that the meter was running slow and as stated earlier, it seems at this stage that the bill is not issued on the ground of any malpractice or theft committed by the plaintiff, though of course, this observation is of a tentative nature as ultimately all these questions are required to be thrashed out in the suit.

Mr.Kanabar has relied upon the judgment of the Honourable Supreme Court in M.P.E.B. v. Basantibai, AIR 1988 SC 71. The Supreme Court has said in the said judgment that dispute whether meter in question is a correct one or faulty is to be decided by the Electrical Inspector and pending dispute, the Electricity Board cannot issue supplementary bill. However, it is an admitted fact that in the instant case, none of the parties has approached the Electrical Inspector by way of reference of their dispute. But Mr.Pancholi submits that since the plaintiff has paid 30%, he should approach the appellate committee as the appellate committee of the

Board is entitled to examine even this question and in that suit, it will not be necessary to proceed with the case and according to him, the suit itself is not maintainable as there is a special forum available. Looking to the facts and circumstances of the case that the present plaintiff has already paid 30% towards supplementary bill and since the question of maintainability of suit is not raised before the trial court on the ground that the matter is now required to be referred only to the appellate committee of the Board, it will be proper if direction is given to the trial court now to dispose of the suit forthwith considering all these questions involved in the suit. The plaintiff is already having electricity connection in his favour since long and there is no interim relief in favour of the Board since 1996. In that view of the matter, especially when both the Advocates have pointed out that this is not a case of theft of electrical energy, the trial court may dispose of the aforeaid suit by 31st December, 2000 and if there is proper amendment in the written statement about maintainability of the suit, the trial court may also decide the said question whether the suit itself is maintainable or not. Mr.Kanabar for the original plaintiff agreed that if any additional amount is required to be paid towards balance of electricity charges, his client will pay the same and will abide by the orders of the Court and that so far as regular consumption charge is concerned, it is needless to say that he is bound to pay it regularly without any default.

Mr.Pancholi for the Board has, therefore, requested that his client will make necessary amendment in the written statement and if any such application is made, the Court will consider the same immediately and also consider the question whether the matter is required to be referred to the appellate committee as per the regulation of the Board. Therefore, even this question is also required to be considered by the trial court at the time of disposing of the suit itself.

Under the circumstances, I direct the trial court to dispose of Regular Civil Suit No.195 of 1994, pending in the Court of Civil Judge (J.D.), Dhoraji by 31st December, 2000 and subject to that, no further direction is now required to be given at this stage. This revision application is accordingly disposed of. Rule is discharged with no order as to costs.

Copy of this writ may be sent to the trial court for compliance forthwith.

It is clarified that this Court has not expressed any opinion on merits whether the suit is maintainable or not. All these questions are required to be considered by the trial court on merits and in accordance with law.

29th September, 2000 (P.B. Majmudar, J.)

(apj)